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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ASUSTEK COMPUTER INC. and ASUS  
COMPUTER INTERNATIONAL,

Plaintiffs,

vs.

RICOH COMPANY, LTD.,

Defendant.

No. C 07-01942-PVT

**RICOH'S MOTION TO DISMISS FOR INSUFFICIENT SERVICE, TO STAY PENDING APPEAL, TO TRANSFER UNDER § 1404(a), TO DECLINE TO ENTERTAIN DECLARATORY JUDGMENT JURISDICTION, AND TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Hearing: July 17, 2007  
Time: 10:00 a.m.  
Dept.: Courtroom 5  
Judge: Honorable Patricia V. Trumbull

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## NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 17, 2007, at 10:00 a.m., or at such other date and time as the Court may order, before the Honorable Patricia V. Trumbull, U.S. Magistrate Judge, in Courtroom 5 of the above-captioned court, located at 280 South 1st Street, San Jose, California, defendant Ricoh Company, Ltd. (“RicoH”) will and hereby does move (1) to dismiss the complaint for insufficiency of service; (2) to stay this action until the Federal Circuit has decided an appeal of the dismissal on jurisdictional grounds of Ricoh’s substantially identical patent infringement case against AsusTek Computer Inc. and ASUS Computer International (collectively, “ASUS”) in the Western District of Wisconsin; (3) to transfer this action to the Western District of Wisconsin, where substantial discovery of the same issues has already taken place; (4) to exercise this Court’s discretion to dismiss this declaratory-judgment action to avoid duplication of judicial effort; and/or (5) to dismiss the complaint for lack of personal jurisdiction.<sup>1</sup> This motion is based on the present notice of motion, the accompanying memorandum of points and authorities, the accompanying Nagashima Declaration, the accompanying Katsuyama Declaration, the argument of counsel, and the Court’s files in this matter, and such additional evidence and argument as may hereinafter be presented.

<sup>1</sup> Although Ricoh must make its Motion to Dismiss for Lack of Personal Jurisdiction now to avoid waiving its personal-jurisdiction defense, Ricoh respectfully suggests that judicial economy would best be served by adjudicating the other motions – in particular, the motion to quash service – before considering personal jurisdiction. As the Supreme Court reiterated just this Term, a “federal court has leeway ‘to choose among threshold grounds for denying audience to a case on the merits.’” *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 127 S. Ct. 1184, 1191 (2007) (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999)). *Sinochem* held that a court may dismiss a case based on *forum non conveniens* before reaching personal and subject-matter jurisdiction. The Court recognized that “considerations of convenience, fairness, and judicial economy” should drive a court’s choice of threshold grounds for dismissal: a court may conserve judicial resources by choosing the threshold path of least resistance, so long as it does not adjudicate the merits of the case. *Id.* at 1192-93; *see also Tenet v. Doe*, 544 U.S. 1, 6 n.4 (2005).



## MEMORANDUM OF POINTS AND AUTHORITIES

### BACKGROUND

Ricoh Company, Ltd. ("Ricoh"), the defendant in this patent-infringement declaratory judgment action, previously sued AsusTek Computer Inc. and ASUS Computer International (collectively, "ASUS") for patent infringement in the Western District of Wisconsin: *Ricoh Company, Ltd. v. AsusTek Computer Inc., ASUS Computer International, Quanta Computer Inc., Quanta Storage Inc., Quanta Computer USA, Inc. and Nu Technology, Inc.*, Case No. 06-C-0462 (the "Wisconsin Suit"). Ricoh is a Japanese corporation; AsusTek is a Taiwanese corporation. Ricoh does not do business in California and has no substantial contacts with California. The depositions of ASUS in the Wisconsin Suit have been taken in Taiwan. About nine months after the Wisconsin Suit was filed, with the deadline for summary judgment motions rapidly approaching, the district court dismissed ASUS on grounds of lack of personal jurisdiction. The Wisconsin Suit remains pending against other defendants and will go to trial in the fall. Final judgment pursuant to Federal Rule of Civil Procedure 54(b) with respect to ASUS has been entered by the court; Ricoh filed a notice of appeal on May 21 and anticipates that the Federal Circuit will hear the appeal late this year.

ASUS purported to effectuate service of process in the present case by mail, rather than follow the requirements of the Hague Convention, to which the United States and Japan are signatories, and despite the fact that Japanese law prohibits service by mail. *See Nagashima Decl.* ¶¶ 4-9.

### ARGUMENT

#### I. The Complaint Should Be Dismissed for Insufficiency of Service of Process

Ricoh moves, pursuant to Fed. R. Civ. P. 12(b)(5), to dismiss for insufficiency of service of process. ASUS purported to make service in this case by mailing the complaint and summons to Ricoh in Japan. Because Japanese law prohibits service of process in this manner, the purported service is a nullity. The Court should therefore dismiss the complaint without

prejudice. *See Fireman's Fund Ins. Co. v. Fuji Elec. Sys. Co.*, No. C-04-3627, 2005 WL 628034 (N.D. Cal. Mar. 17, 2005) (granting motion to dismiss for insufficient service of process where complaint was served by mail on Japanese defendant).

The United States and Japan are signatories to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Feb. 10, 1969, 20 U.S.T. 361, 362 ("the Hague Convention"). The Hague Convention applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698-99 (1988) (internal quotation marks omitted). Although the Hague Convention does not *forbid* service of process by international mail, if permitted by the law of the receiving country, neither does the Convention itself *authorize* mail service. Any affirmative authorization of service by international mail therefore "must come from the law of the forum in which the suit is filed." *Brockmeyer v. May*, 383 F.3d 798, 804 (9th Cir. 2004).

For a suit filed in federal court, the only possible source of such authority is Fed. R. Civ. P. 4(f)(2)(C)(ii). *See* 383 F.3d at 804. That rule provides, in relevant part:

(f) [S]ervice ... may be effected in a place not within any judicial district of the United States:

...  
(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

...  
(C) *unless prohibited by the law of the foreign country, by...*

...  
(ii) any form of mail requiring a signed receipt, *to be addressed and dispatched by the clerk of the court to the party to be served....*

Fed. R. Civ. P. 4(f)(2)(C)(ii) (emphasis added).

Mail service does not satisfy the requirements of that rule for two reasons. First, as this Court has previously recognized, the law of Japan prohibits service by mail. *See* accompanying Declaration of Takaaki Nagashima, Esq. ¶¶ 4-9 ("Nagashima Decl."); *Fireman's Fund*, 2005

1 WL 628034, at \*3-\*4; *see also Suzuki Motor Co. v. Superior Court*, 200 Cal. App. 3d 1476,  
 2 1480-81, 1485, 249 Cal. Rptr. 376, 379, 382 (Ct. App. 1988) (issuing mandamus to quash  
 3 service because Japan does not allow service by registered mail). Second, it appears that the  
 4 mailing was neither addressed nor dispatched by the clerk of court, as required by the rule. This  
 5 failure to comply with the rule likewise justifies dismissing the complaint without prejudice. *See*  
 6 *Alcaraz Martinez v. White*, No. C 06-01595, 2006 WL 1530111, at \*1 (N.D. Cal. June 2, 2006)  
 7 (quashing service under Rule 4(f)(2)(C)(ii) and dismissing complaint where record did not reflect  
 8 that “the clerk of the court mailed the summons and complaint”).

9 That Ricoh actually received the mailed complaint is of no moment. “A federal court  
 10 does not have jurisdiction over a defendant unless the defendant has been served properly under  
 11 [Rule] 4.” *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688  
 12 (9th Cir. 1988). Where service does not comply with Rule 4, “neither actual notice nor simply  
 13 naming the defendant in the complaint will provide personal jurisdiction.” *Id.* (internal quotation  
 14 marks omitted). *See also, e.g., Prewitt Enters., Inc. v. OPEC*, 353 F.3d 916, 919-20, 924-25  
 15 (11th Cir. 2003) (complaint dismissed even though defendant had actual notice of suit, because  
 16 service by mail was prohibited under receiving country’s law).

17 Because ASUS’s purported service by mail is contrary to Japanese law and not in  
 18 compliance with Rule 4, the complaint should be dismissed without prejudice. *See, e.g., Graval*  
 19 *v. P.T. Bakrie & Bros.*, 986 F. Supp. 1326, 1334 (C.D. Cal. 1996) (dismissing without prejudice  
 20 because of insufficiency of service on foreign defendant).

## 21 **II. The Action Should Be Stayed Pending the Federal Circuit’s Resolution of the** 22 **Appeal From the Dismissal on Personal Jurisdiction Grounds**

23 As mentioned, Ricoh filed a patent-infringement action (the “first-filed action”)  
 24 substantially identical to this action against ASUS and another Taiwanese company (Quanta) in  
 25  
 26  
 27

1 the Western District of Wisconsin in August 2006.<sup>2</sup> In April 2007, after substantial discovery  
 2 between the parties had taken place, the Wisconsin court dismissed the first-filed action against  
 3 ASUS for lack of personal jurisdiction. Ricoh thereafter filed a motion for entry of a final  
 4 judgment with respect to ASUS, Fed. R. Civ. P. 54(b), which the Wisconsin court granted.  
 5 Ricoh has filed a notice of appeal and expects that the Federal Circuit will hear the appeal late  
 6 this year.

7 If this Court does not dismiss the complaint for insufficiency of service of process, it  
 8 should stay this action pending the resolution of Ricoh's appeal of the Wisconsin judgment.<sup>3</sup> If  
 9 the Federal Circuit reverses the judgment and remands the case for trial, as Ricoh believes that it  
 10 will, the first-filed action against ASUS would likely go to trial in early or mid-2008. It would  
 11 be wastefully duplicative of judicial resources to have this declaratory-judgment action proceed  
 12 in this Court at the same time that the first-filed action is proceeding in Wisconsin.

13 It is standard practice to stay a later-filed declaratory judgment patent action when a  
 14 normal patent infringement action has been filed earlier in another court.<sup>4</sup> It is within this  
 15

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16 <sup>2</sup> The instant action is a "mirror-image" declaratory-judgment action. *See VE Holding*  
 17 *Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1583 (Fed. Cir. 1990) ("It has long been  
 18 held that a declaratory judgment action alleging that a patent is invalid and not infringed—the  
 mirror image of a suit for patent infringement—is governed by the general venue statutes ....").

19 <sup>3</sup> During the pendency of the first-filed action, the statute of limitations has been running  
 20 on Ricoh's claims against ASUS. Consequently, if the dismissal in the first-filed action is  
 upheld and if Ricoh is forced to pursue its patent-infringement claims by counterclaim in the  
 21 California case, it will lose a significant portion of the damages to which it believes it is entitled.  
 In contrast, if Ricoh prevails on appeal and is permitted to litigate its claims on remand to the  
 Wisconsin court, there would be no comparable loss of damages due to the running of the statute  
 of limitations. No substantial hardship would result for ASUS from the stay.

22 <sup>4</sup> *See, e.g., Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982)  
 23 (holding that first-to-file rule is "a generally recognized doctrine of federal comity which permits  
 a district court to decline jurisdiction over an action when a complaint involving the same parties  
 and issues has already been filed in another district") (citing *Church of Scientology of Cal. v.*  
 24 *United States Dep't of the Army*, 611 F.2d 738, 749 (9th Cir. 1979)); *Paxonet Communications,*  
 25 *Inc. v. TranSwitch Corp.*, 303 F. Supp. 2d 1027, 1029 (N.D. Cal. 2003); *see also Inherent.com v.*  
 26 *Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1097 (N.D. Cal. 2006) ("a district court may transfer,  
 stay or dismiss the second action if it determines that it would be in the interest of judicial

1 Court's sound discretion to stay these proceedings pending Ricoh's appeal of the Wisconsin  
 2 judgment.<sup>5</sup> Because a stay pending the disposition of Ricoh's appeal would minimize  
 3 duplicative proceedings and conserve judicial resources, the Court should exercise its discretion  
 4 in favor of a stay.

### 5 **III. The Court Should Not Entertain the Declaratory Judgment Action**

6 The Declaratory Judgment Act provides that a court "may declare the rights and other  
 7 legal relations of any interested party." 28 U.S.C. § 2201(a) (emphasis added). "This text has  
 8 long been understood 'to confer on federal courts unique and substantial discretion in deciding  
 9 whether to declare the rights of litigants.'" *MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764,  
 10 776 (2007) (quoting *Wilton v. Seven Falls Co.*, 515 U. S. 277, 286 (1995)). Accordingly, this  
 11 Court has "discretion in determining *whether and when* to entertain an action under the  
 12 Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional  
 13 prerequisites." *Wilton*, 515 U.S. at 282 (emphasis added). The district court always "retains  
 14 discretion under the Act to decline declaratory judgment jurisdiction." *Teva Pharms. USA, Inc.*  
 15 *v. Novartis Pharms. Corp.*, No. 06-1181, 2007 WL 942201, at \*4 n.3 (Fed. Cir. Mar. 30, 2007);  
 16 *see also Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 241 (1952); *Government Employees*  
 17 *Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998) (en banc); *Spectronics Corp. v. H.B.*  
 18 *Fuller Co.*, 940 F.2d 631, 634 (Fed. Cir. 1991) ("When there is an actual controversy and thus  
 19 jurisdiction, the exercise of that jurisdiction is discretionary.").

20  
 21  
 22 economy and convenience of the parties"); *Z-Line Designs, Inc. v. Bell'O Int'l, LLC*, 218 F.R.D.  
 663, 665 (N.D. Cal. 2003).

23 <sup>5</sup> *See Karuk Tribe of Cal. v. U.S. Forest Serv.*, No. Civ. 04-4275, 2006 WL 228943, at \*2  
 24 (N.D. Cal. Jan. 30, 2006) ("The Court 'has broad discretion to stay proceedings as an incident to  
 25 its power to control its own docket.'" (quoting *Clinton v. Jones*, 520 U.S. 681, 707-08 (1997));  
 26 *see also Dunham v. Environmental Chem. Corp.*, No. C 06-03389, 2007 WL 39317, at \*1 (N.D.  
 27 Cal. Jan. 4, 2007).

1 In the circumstances here, where the patent-infringement issues are already before a sister  
2 federal court in Wisconsin and where proceeding with the action will lead to a needless  
3 duplication of judicial effort, this Court should exercise its discretion by declining to entertain  
4 this declaratory-judgment suit. Conservation of judicial resources by avoiding duplicative litigation  
5 is a well-recognized ground for declining declaratory judgment jurisdiction. *See, e.g., Fern*  
6 *v. Turman*, 736 F.2d 1367, 1370 (9th Cir. 1984); *Great Southern Life Ins. Co. v. Zarate*, No.  
7 C96-4520, 1997 WL 136246, at \*1 (N.D. Cal. Mar. 13, 1997) ("Federal courts have discretion to  
8 dismiss or stay claims for declaratory relief if it would be uneconomical and unwise to proceed  
9 with the federal action."). The Federal Circuit recently approved a district court's refusal to  
10 exercise jurisdiction over a declaratory judgment action in circumstances similar to those here.  
11 *See Celco P'ship v. Broadcom Corp.*, No. 2006-1514, 2007 WL 841615, at \*1 (Fed. Cir. Mar.  
12 19, 2007) (unpub.) ("In light of these other proceedings involving the chip manufacturer, the trial  
13 court determined that entertaining Celco's declaratory judgment action would be 'an inappropriate  
14 use of multiple judicial districts.' Because of potential judicial efficiency, and because  
15 Celco has not shown sufficient harm to require immediate resolution of its case prior to the  
16 conclusion of these other proceedings, we find no abuse of discretion in dismissing the case.").  
17 This Court should follow the same course.

#### 18 **IV. The Case Should Be Transferred to Wisconsin**

19 If the Court does not dismiss for insufficiency of service and decides against a stay  
20 pending appeal of the Wisconsin judgment, it should transfer the case to the Western District of  
21 Wisconsin under 28 U.S.C. § 1404(a), in the interest of judicial economy. The Wisconsin court  
22 is proceeding with the first-filed action against other parties; it has already held a claim-  
23 construction hearing and has recently issued its constructions of the claims of the patents in suit;  
24 it has become familiar with the technology and other issues relevant to the patents in suit and  
25 will continue to build on that familiarity as it considers dispositive motions due June 1. It would  
26 be wasteful of judicial resources to have this Court start from scratch and re-do much of the work



1 already being done in the first-filed action in Wisconsin. The circumstances here fully justify a  
2 transfer under § 1404(a).<sup>6</sup>

### 3 **V. The Court Should Dismiss the Complaint for Lack of Personal Jurisdiction**

#### 4 **A. Procedure on Jurisdictional Motion To Dismiss**

5 The plaintiff bears the burden of demonstrating that the Court's exercise of personal  
6 jurisdiction over the defendant is appropriate. *See Schwarzenegger v. Fred Martin Motor Co.*,  
7 374 F.3d 797, 800 (9th Cir. 2004); *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990).  
8 Where, as here, the motion is based on written materials rather than an evidentiary hearing, the  
9 plaintiff must "make a *prima facie* showing of the jurisdictional facts." 911 F.2d at 1361; *BenQ*  
10 *America Corp. v. Forward Elecs. Co.*, No. C-05-2409, 2005 WL 3445629, at \*3 (N.D. Cal. Dec.  
11 15, 2005). In such cases, the plaintiff cannot "simply rest on the bare allegations of its  
12 complaint." *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977); *BenQ*,  
13 2005 WL 3445629, at \*3.

14 When a defendant properly controverts jurisdictional allegations of the complaint, the  
15 plaintiff must produce *competent, nonconclusory* affidavits to support jurisdiction.<sup>7</sup> Allegations  
16

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17 <sup>6</sup> *See Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 769 (9th Cir. 1997) (court has dis-  
18 cretion to transfer, stay, or dismiss case "in the interest of efficiency and judicial economy");  
19 *Zimmer Enters., Inc. v. Atlandia Imports, Inc.*, No. 3:06-cv-038, 2007 WL 743800, at \*7 (S.D.  
20 Ohio Mar. 13, 2007) (transferring declaratory judgment action); *CQGT, LLC v. Trading Techs.*  
21 *Int'l, Inc.*, No. 05-cv-01584, 2006 WL 2711770, at \*2-\*3 (D. Colo. Sept. 21, 2006) (transferring  
22 declaratory judgment case to forum where patent infringement case was pending); *BBC Int'l Ltd.*  
23 *v. Lumino Designs, Inc.*, 441 F. Supp. 2d 438, 447 (E.D.N.Y. 2006) ("In sum, after careful  
24 consideration of all the relevant factors and the totality of the circumstances, including  
preventing the unnecessary expense and waste of judicial resources by having two closely related  
[patent] cases proceed in parallel in two separate districts, this Court concludes that this  
[declaratory judgment] case should be transferred."); *MasterCard Int'l, Inc. v. Lexcel Solutions,*  
25 *Inc.*, No. 03 Civ.7157, 2004 WL 1368299, at \*8 (S.D.N.Y. June 16, 2004) ("It would be  
inefficient and a waste of judicial resources to subject the same parties to suit over  
interconnected [patent infringement] claims concerning identical technology and underlying  
disputes in two separate fora.").

26 <sup>7</sup> *See Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) ("conclusory allegations  
27 ... are insufficient to establish a *prima facie* showing of personal jurisdiction"); *Taylor v.*

made, as here, “on information and belief” are not competent on a motion to dismiss for lack of personal jurisdiction.<sup>8</sup>

## B. General Jurisdiction

### 1. Legal test for general jurisdiction

The complaint alleges no facts on which *specific* jurisdiction over Ricoh could be based.<sup>9</sup> To establish *general* jurisdiction here, ASUS must show that Ricoh has continuous and substantial contacts with California. *See, e.g., Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 416 (1984) (“continuous and systematic general business contacts”); *Glen-core Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1125 (9th Cir. 2002). General jurisdiction has “an exacting standard, . . . because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801. The attenuated contacts that Ricoh has with this forum do not qualify for general jurisdiction under Ninth Circuit precedents. *See Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986) (collecting cases where general

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*Portland Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967) (“mere allegations of the complaint, when contradicted by affidavits,” insufficient to establish personal jurisdiction); *see also Alperin v. Vatican Bank*, 410 F.3d 532, 538 n.1 (9th Cir. 2005) (“bare-bones assertions” of minimum contacts are insufficient to support jurisdiction), *cert. denied*, 126 S. Ct. 1141, and *cert. denied*, 126 S. Ct. 1160 (2006).

<sup>8</sup> *See Silverstein v. Experienced Internet.com, Inc.*, No. C 05-0160 PVT, 2005 WL 1629935, at \*3 (N.D. Cal. July 11, 2005) (“the allegations that Defendants are doing business in California” are not competent evidence “because Plaintiff bases those allegations on ‘information and belief’”; complaint dismissed for lack of personal jurisdiction); *Bradford v. Mitchell Bros. Truck Lines*, 217 F. Supp. 525, 527-28 (N.D. Cal. 1963) (allegation as to corporation’s citizenship “on information and belief” is insufficient for jurisdictional purposes and amounts to “no allegation at all”); *see also Taylor v. List*, 880 F.2d 1040, 1045 n.3 (9th Cir. 1989) (affidavits made on information and belief do “not raise a triable issue”).

<sup>9</sup> Although ASUS has alleged no basis for specific jurisdiction in the Northern District of California, specific jurisdiction for declaratory judgment actions against a foreign patentee can be had in the U.S. District Court for the District of Columbia pursuant to special jurisdictional provisions of 35 U.S.C. § 293.



1 jurisdiction was denied despite defendants' significant contacts with forum).

2                   **2. Ricoh's contacts with California are insufficient to establish general**  
 3                   **jurisdiction**

4           ASUS's jurisdictional allegations are entirely conclusory. The complaint states, in  
 5 pertinent part:

6           Jurisdiction over RICOH is proper in this Court because RICOH has *continuous,*  
 7 *systematic, and substantial contacts* with the State of California. *On information*  
 8 *and belief*, RICOH sells, offers to sell, imports, repairs, and services products in  
 9 California, including the Northern District of California. *Upon further informa-*  
 10 *tion and belief*, RICOH has participated as a party in the past, and is currently a  
 11 party in other actions that are now pending, in the Northern District of California.

12           Compl. ¶ 9 (emphases added). After reciting the formula for general jurisdiction, ASUS then  
 13 asserts, in conclusory terms and on information and belief, that Ricoh's contacts with California  
 14 suffice under the applicable legal standard.

15           The facts are to the contrary. Ricoh is a Japanese corporation with its principal place of  
 16 business in Japan. Declaration of Hiroshi Katsuyama ¶ 2 ("Katsuyama Decl."). Ricoh has no  
 17 offices, bank accounts, property, or employees in California. *Id.* ¶ 3. It has not established a  
 18 telephone listing or mailing address in California. *Id.* ¶ 4. None of its officers or directors are  
 19 domiciled in California and none of its board meetings have been held in California. *Id.* ¶ 5. It  
 20 has no agent for service of process in California. *Id.* ¶ 6. Its employees do not regularly travel to  
 21 California to conduct business. *Id.* ¶ 7. It does not direct any of its advertising toward  
 22 California. *Id.* ¶ 8. It does not take orders in California or solicit business in California. *Id.* ¶ 9.  
 23 It does not import goods into California. *Id.* ¶ 10. In sum, Ricoh has nothing approaching the  
 24 "continuous and systematic general business contacts" required for general jurisdiction.  
 25 *Helicopteros Nacionales*, 466 U.S. at 416.

26           When a court determines general jurisdiction, it must take into account "whether the  
 27 defendant makes sales, solicits or engages in business in the state, serves the state's markets,  
 28 designates an agent for service of process, holds a license, or is incorporated there." *Bancroft &*  
*Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). Not one of those

1 factors applies to Ricoh. See Katsuyama Decl. ¶¶ 11, 12. In *Bancroft*, the Ninth Circuit held  
2 general jurisdiction lacking because the defendant was not registered or licensed to do business  
3 in California; paid no taxes in California; maintained no bank accounts in California; and  
4 targeted no print, television, or radio advertising toward California. In these circumstances, the  
5 defendant's occasional sales of merchandise to California residents were insufficient to create  
6 general jurisdiction. See 223 F.3d at 1086. The facts here are similar to those in *Bancroft*, and  
7 the result should be no different.

8 The lack of contacts with California, as shown by the Katsuyama Declaration, place this  
9 case at least on a par with other cases in which the Ninth Circuit has held personal jurisdiction  
10 lacking. For example, in *Cubbage v. Merchant*, 744 F.2d 665, 667-68 (9th Cir. 1984), the court  
11 found no general jurisdiction over the defendant doctors even though they had significant  
12 numbers of patients in forum, used the forum state's medical-insurance system, and listed  
13 themselves in a telephone directory that reached the forum state. Ricoh has even fewer contacts  
14 than did the defendant doctors in *Cubbage*. Ricoh has no customers in California; does not use  
15 the state's insurance system; and does not list itself in a telephone directory that reaches  
16 California. Katsuyama Decl. ¶¶ 4, 13. Likewise, in *Congoleum Corp. v. DLW*  
17 *Aktiengesellschaft*, 729 F.2d 1240, 1243 (9th Cir. 1984), the court found no general jurisdiction  
18 even though the defendant maintained a sales force in the forum. Ricoh has no sales force in  
19 California. Katsuyama Decl. ¶ 12.

20 Ricoh Americas Corporation ("RAC"), a subsidiary of defendant Ricoh, has customers in  
21 California for products unrelated to this litigation. Katsuyama Decl. ¶¶ 14-16. It is well  
22 established that as long as a parent and a subsidiary are separate and distinct corporate entities,  
23 the presence of one in a forum state may not be attributed to the other.<sup>10</sup> Ricoh has additional

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24  
25 <sup>10</sup> *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 337-38 (1925); *Doe v. Unocal*  
26 *Corp.*, 248 F.3d 915, 925 (9th Cir. 2001) ("The existence of a relationship between a parent

1 subsidiaries that perform functions similar to those of RAC, but they also operate in the same  
 2 way and thus their contacts are not imputable to Ricoh. *See* Katsuyama Decl. ¶ 17. Thus, ASUS  
 3 has not alleged and cannot establish the facts needed to support exercise of general jurisdiction  
 4 over Ricoh in this forum. The complaint should therefore be dismissed.

### 5 3. ASUS is not entitled to jurisdictional discovery

6 ASUS has not made out enough of a jurisdictional case even to justify discovery. A  
 7 plaintiff cannot avoid its pre-filing investigation responsibilities and bootstrap itself into a  
 8 lawsuit against a non-resident defendant by simply suing and then professing the need for  
 9 jurisdictional discovery. A defendant may not be subjected to discovery unless the plaintiff has  
 10 made at least a minimally colorable showing of personal jurisdiction. *Central States, S.E. &*  
 11 *S.W. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 946 (7th Cir. 2000)  
 12 (“At a minimum, the plaintiff must establish a colorable or prima facie showing of personal  
 13 jurisdiction before discovery should be permitted.”); *Hansen v. Neumueller GmbH*, 163 F.R.D.  
 14 471, 475 (D. Del. 1995) (“[A] court cannot permit discovery as a matter of course simply  
 15 because a plaintiff has named a particular party as a defendant. The court must be satisfied that  
 16 there is some indication that this particular defendant is amenable to suit in this forum.”). ASUS  
 17 has not met that burden here and therefore is not entitled to anything but a dismissal without  
 18 prejudice.

19 District courts properly deny jurisdictional discovery where plaintiffs fail to make a

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21 company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on  
 22 the basis of the subsidiaries’ minimum contacts with the forum.”) (citing *Transure, Inc. v. Marsh*  
 23 *& McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985)); *Harris Rutsky & Co. Ins. Servs., Inc. v.*  
 24 *Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003) (100% ownership does not make  
 25 subsidiary an alter ego); *American Tel. & Tel. v. Compagnie Bruxelles Lambert*, 94 F.3d 586,  
 26 590 (9th Cir. 1996) (where foreign parent company conducted no business and maintained no  
 27 offices in California, mere fact that it maintained a majority interest in a California subsidiary did  
 28 not suffice to confer jurisdiction); *U.S. Vestor, LLC v. Biodata Info. Tech. AG*, 290 F. Supp. 2d  
 1057, 1064 (N.D. Cal. 2003).

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1 colorable showing that personal jurisdiction exists or a persuasive case that sought-for  
2 jurisdictional discovery will actually lead to probative evidence that the forum has personal  
3 jurisdiction. Thus, in *McLaughlin v. McPhail*, 707 F.2d 800 (4th Cir. 1983), as here, the  
4 defendants submitted affidavits stating that they had not engaged in the acts enumerated in the  
5 long-arm statute. The plaintiff, as here, offered “nothing beyond his bare allegations” that the  
6 defendants had had significant contacts with the forum state. *Id.* at 806. It was therefore proper  
7 for the district court to deny jurisdictional discovery and simply dismiss. *Id.* at 806-07. For the  
8 same reason, ASUS is not entitled to file its complaint in this case simply as a supposed license  
9 to engage in jurisdictional discovery.

#### 10 CONCLUSION

11 For the foregoing reasons, the complaint should be dismissed without prejudice for  
12 insufficiency of service. In the alternative, the case should be stayed pending appeal to the  
13 Federal Circuit; or this Court should, in the exercise of its discretion, decline to entertain this  
14 declaratory-judgment action; or the Court should transfer the case to the Western District of  
15 Wisconsin; or the Court should dismiss the complaint for lack of personal jurisdiction.

1 Dated: May 24, 2007

Respectfully submitted,

3 /s/ Donald P. Gagliardi

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